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Attorneys for Defendant American Title and Escrow

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

FLAGSTONE DEVELOPMENT, LLC,  
an Arizona limited liability company,  
and LAWRENCE A. HEATH,  
  
Plaintiffs,

-vs-

WAYNE JOYNER, JUSTIN JOYNER,  
as individuals; ROCKY MOUNTAIN  
TIMBERLANDS, LLC, a Montana  
limited liability company, WAYNE  
MARCHWICK, AMERICAN TITLE  
AND ESCROW, a Montana corpora-  
tion, FIRST AMERICAN TITLE  
COMPANY, a California corporation,  
DEVELOPER FINANCE CORPOR-  
ATION, a Massachusetts corporation,  
NICHOLAS POWERS, III, a/k/a  
NICHOLAS D. POWERS, JAKE  
KORELL, LANDMARK OF BILLINGS,  
INC., a Montana corporation, JON  
USSIN, U BAR S REAL ESTATE, a  
Montana corporation, and JOHN  
DOES 11 through 30,

Defendants.

Cause No. CV-08-100-BLGRFC

**DEFENDANT AMERICAN TITLE  
AND ESCROW'S  
MOTION TO EXCLUDE  
PLAINTIFFS' DAMAGES  
EXPERT GRABOIS**

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Defendant American Title & Escrow respectfully requests the exclusion of testimony or evidence from Plaintiffs' damages expert, Dale Grabois. Grabois' alleged expert opinion lacks the necessary reliability to be admissible under the requirements of Rule 702 of the Federal Rules of Evidence and the case law interpreting it, including *Daubert v. Merrell Dow Pharmaceuticals*,

*Inc.*, 509 U.S. 579, 597 (1993). The accompanying Combined Brief in Support of Partial Motion for Summary Judgment on Damages and Motion to Exclude Plaintiffs' Damages Expert Dale Grabois more fully supports this Motion.

Plaintiffs object to this Motion.

DATED this 7<sup>th</sup> day of August, 2011.

MOULTON BELLINGHAM PC

s/s Gerry Fagan

Attorney for Defendant  
American Title and Escrow

# CERTIFICATE OF SERVICE

I hereby certify that on the 7<sup>th</sup> day of August, 2011, a copy of the foregoing document was served on the following persons by the following means:

|   | CM/EFC | Hand<br>Delivery | Mail | Overnight<br>Delivery<br>Service | Fax | Email |
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| Candace Payne<br>Matt Lancaster<br>Luxan & Murfit, PLLP<br>24 West Sixth Avenue, 4 <sup>th</sup> Floor<br>P.O. Box 1144<br>Helena, MT 59624<br><a href="mailto:Cpayne@luxanmurfitt.com">Cpayne@luxanmurfitt.com</a>   |        | X                |      |                                  |     |       |
| David L. Charles<br>Daniela E. Olschlager<br>Crowley Fleck PLLP<br>P.O. Box 2529<br>Billings, MT 59103-2529<br><a href="mailto:Dcharles@crowleyfleck.com">Dcharles@crowleyfleck.com</a>   |        | X                |      |                                  |     |       |
| Eric Edward Nord<br>Crist, Krogh & Nord, LLC<br>The Securities Bldg.<br>2708 First Avenue N, Suite 300<br>Billings, MT 59101<br><a href="mailto:Enord@crislaw.com">Enord@crislaw.com</a>  |        | X                |      |                                  |     |       |
| Lynn M. Grant<br>Cashmore & Grant, PC<br>2722 3 <sup>rd</sup> Avenue North, Ste. 321<br>Billings, MT 59101<br><a href="mailto:Lgrantcashlaw@aol.com">Lgrantcashlaw@aol.com</a>  |        | X                |      |                                  |     |       |
| Mark D. Parker<br>Shawn P. Cosgrove<br>Parker, Heitz & Cosgrove, PLLC<br>P.O. Box 7212<br>Billings, MT 59103-7212<br><a href="mailto:markdparker@parker-law.com">markdparker@parker-law.com</a><br><a href="mailto:shawncosgrove@parker-law.com">shawncosgrove@parker-law.com</a> |        | X                |      |                                  |     |       |

|   | CM/EFC | Hand<br>Delivery | Mail | Overnight<br>Delivery<br>Service | Fax | Email |
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|   |  |   |  |  |  |  |
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| John C. Breslo<br>The Breslo Law Firm<br>8426 East Shea Boulevard<br>Scottsdale, AZ 85260 |  | X |  |  |  |  |
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/ s / Gerry Fagan  
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